IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3465 OF 2005

Deepak Sharad Jare. ... Applicant.

Versus.

Union of India and others. ... Respondents.

Shri B.D.Joshi with Shri A.M.Sachwani for the Applicant.

Shri H.V.Mehta for the Respondent No.1.

Ms.R.M.Gadhavi, A.P.P. for the State.

CORAM : ABHAY S. OKA, J.

DATED : 22nd June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties. When the earlier Application No.3319 of 2005 made by the Applicant came before this Court, an order was passed by this Court directing that 72 hours notice will be given to the Applicant before arresting him. This Court granted liberty to the Applicant to move the learned Sessions Court after notice was given. The learned Additional Sessions Judge has rejected the Application for grant of anticipatory bail made by the Applicant.

2. It is pertinent to note that when the earlier application made by the Applicant came up before this Court, a submission was made by the Respondents that the offence committed by the Applicant is under section 9(1)(bbbb) of the Central Excise Act, 1944. Section 9A of the said Act of 1944 provides that the offences under

section 9 shall be deemed to be non-cognizable within the meaning of the Code of Criminal Procedure, 1973. Sub-section (2) of the said section provides that the said offences are compoundable. The punishment prescribed for offence under section 9(1)(bbbb) is upto 7 years with fine and the minimum punishment is six months. It is brought to my notice that the prior approval has been granted under section 13 of the said Act of 1944 for arresting the Applicant herein.

3. It is also not in dispute that the main accused Krishna Kumar Gupta who was earlier arrested has been ordered to be enlarged on bail.

4. The learned Counsel appearing for the Applicant submitted that there is no material placed on record to show that custodial interrogation of the Applicant is required. He stated that all along the Applicant has been attending the concerned office for the purpose of interrogation. He submitted that in the statement of Krishna Kumar Gupta he has stated that one Shri Ashok Sawant used to look after his business activities and all the records are available with him.

5. Shri Mehta appearing for the Respondents submitted that though the Applicant attended the office for interrogation he is not disclosing the relevant material. He submitted that considering the material

which is available with the Applicant, custodial interrogation is required. He has placed reliance on an affidavit-in-reply filed by one Shri C.S.Bhatade, Superintendent of Central Excise.

6. I have considered the rival submissions. A reference will have to be made to the affidavit-in-reply filed by Shri C.S.Bhatade, Superintendent of Central Excise in Application No.3319 of 2005. It is stated in the said affidavit that the said Shri K.K.Gupta had appointed the Applicant herein to collect the cheques on account of rebate and Shri K.K.Gupta stated in his statement dated 25th April 2005 that the Applicant herein was his employee. In the said affidavit it is stated that Shri K.K.Gupta has repeatedly stated that all his paper work has been done by Shri Ashok Sawant, who is absconding. It is stated that till statement of Ashok Sawant is recorded it will not be possible for the Department to pin-point the role played by the Applicant.

7. A reference will have to be made to the remand application submitted by the Respondent seeking remand of K.K.Gupta. In the said remand Application it is stated that K.K.Gupta was the only person authorised to operate the accounts in which the amount received by way of rebate has been deposited. It is stated that

K.K.Gupta is deliberately withholding the information relating to whereabouts of Ashok Sawant.

8. A reference will also have to be made to the affidavit-in-reply filed in this application. In the said affidavit apart from reiterating the other material on record, nothing has been stated as regards the role played by the Applicant and the necessity of his custodial interrogation.

9. In view of the stand taken by the Respondents in the affidavits and in the remand application, this is not a case where necessity of custodial interrogation is established at this stage. The Applicant has been attending the concerned office for the purpose of investigation.

10. As held by the Apex Court, grant of anticipatory bail will enure to the benefit of the Applicant only for a limited period i.e. till filing of the charge sheet and thereafter he will have to move the concerned Court for appropriate relief.

11. Hence the Application is disposed of by pass the following order:

(i) In the event of arrest of the Applicant by the Respondent No.1 in connection with

investigation pertaining to F.No.V/PI/THI/12-5/2005 of Central Excise Department, Thane-1 and M/s.Apex Corporation, M/s.Muni Trade Pvt.Ltd., M/s.Globe Traders, M/s.Mansa Traders and M/s.Venkatesh Mercantile Pvt.Ltd., Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.75,000/- with one of two local sureties in the like amount. This order will enure to the benefit of the Applicant only till charge sheet is filed.

(ii) The Applicant will cooperate for investigation and will attend the office of the concerned Officer for that purpose as and when called upon to do so. The Applicant will not make any attempt directly or indirectly to tamper with the prosecution evidence.

(iii) Parties to act on an authenticated copy of this order.

Judge.